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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/869,550	01/08/2002	Jan Trebesius	(H) 01ICP0235USP	4686
7590	09/22/2004		EXAMINER	
M Robert Kestenbaum 11011 Bermuda Dunes NE Albuquerque, NM 87111			THEIN, MARIA TERESA T	
			ART UNIT	PAPER NUMBER
			3625	

DATE MAILED: 09/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	09/869,550	TREBESIUS, JAN
	<b>Examiner</b> Marissa Thein	<b>Art Unit</b> 3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on January 8, 2002.

2a)  This action is **FINAL**.                            2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-13 and 15 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5)  Claim(s) \_\_\_\_\_ is/are allowed.

6)  Claim(s) 1-13 and 15 is/are rejected.

7)  Claim(s) \_\_\_\_\_ is/are objected to.

8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 08 January 2002 is/are: a)  accepted or b)  objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a))

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date *June 28, 2001*.

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. *\_\_\_\_\_*.  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

**DETAILED ACTION*****Preliminary Amendment***

Applicant's "Preliminary Amendment" received on January 29, 2002 has been considered and entered.

Claim 14 is cancelled. New claim 15 is added. Claims 1-13 and 15 remain pending in this application.

***Information Disclosure Statement***

The information disclosure statement (IDS) submitted on June 28, 2001 is being considered by the examiner.

***Drawings***

This application has been filed with informal drawings, which are acceptable for examination purposes only. Figure 2 contains improper shading and improper hand written text, which may affect clarity when reproduced.

Applicant is required to submit a formal correction of the noted defect. Applicant is required to submit drawing corrections promptly. Drawing objections may no longer be held in abeyance.

***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

***Arrangement of the Specification***

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.
- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
- (d) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC (See 37 CFR 1.52(e)(5) and MPEP 608.05. Computer program listings (37 CFR 1.96(c)), "Sequence Listings" (37 CFR 1.821(c)), and tables having more than 50 pages of text are permitted to be submitted on compact discs.) or REFERENCE TO A "MICROFICHE APPENDIX" (See MPEP § 608.05(a). "Microfiche Appendices" were accepted by the Office until March 1, 2001.)
- (e) BACKGROUND OF THE INVENTION.
  - (1) Field of the Invention.
  - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
- (f) BRIEF SUMMARY OF THE INVENTION.
- (g) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
- (h) DETAILED DESCRIPTION OF THE INVENTION.
- (i) CLAIM OR CLAIMS (commencing on a separate sheet).
- (j) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
- (k) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-13 and 15 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims are generally narrative and indefinite, failing to conform with current U.S. practice. They appear to be a literal translation into English from a foreign document and are

replete with grammatical and idiomatic errors. The Examiner will interpret the claims as best understood.

Claims 7-13 and 15 provide for the use of operating an online ordering system, but, since the claim does not set forth any steps involved in the method/process, it is unclear what method/process applicant is intending to encompass. A claim is indefinite where it merely recites a use without any active, positive steps delimiting how this use is actually practiced.

Claims 7-13 and 15 are rejected under 35 U.S.C. 101 because the claimed recitation of a use, without setting forth any steps involved in the process, results in an improper definition of a process, i.e., results in a claim which is not a proper process claim under 35 U.S.C. 101. See for example *Ex parte Dunki*, 153 USPQ 678 (Bd.App. 1967) and *Clinical Products, Ltd. v. Brenner*, 255 F. Supp. 131, 149 USPQ 475 (D.D.C. 1966).

### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1-6, and 10-13 are rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 5,845,263 to Camaisa et al.**

Regarding claim 1(as best understood), Camaisa discloses an online ordering system for food outlets, comprising:

- at least a first computer system which is accessible via the Internet under at least one domain, in which data on food outlets are stored on which a program runs (see at least Figures 1-2; col. 5, lines 37-67; col. 6, lines 38-52; col. 7, lines 24-35);
- in each case a communication connection which can be established at least temporarily between the computer system and at least a large number of all the food outlets covered (see at least Figures 1-2; col. 5, lines 37-67; col. 7, lines 24-35); and
- connects an output device and/or display device at the food outlets to the first computer system (see at least Figures 1-2; col. 5, lines 37-67; col. 7, lines 24-35).

Regarding claims 2-6 (as best understood), Camaisa discloses fax machine (see at least col. 16, lines 44-45); an interactive program runs on the first computer system (see at least col. 3, lines 43-61; col. 5, lines 59-62); a second computer system, which is connected to the Internet, can communicate with the first computer system (see at least Figures 1-2; col. 5, lines 37-67; col. 7, lines 24-35); the second computer system comprises a fax server (see at least col. 10, lines 19-23; col. 16, lines 43-44); and the program comprises at least one prompted user program and one unprompted user program (see at least col. 5, line 59 – col. 6, line 3).

Regarding claim 10, Camaisa transmitting a message to the orderer on the success/failure of passing on the order to the food outlet (see at least col. 15, lines 18-20).

Regarding claim 11 (as best understood), Camaisa discloses display of price categories of the food outlets; user input of a specific category of the price categories displayed; and response of the system to the user input on the basis of the stored data on the food outlets and display of the food outlets which is in the price categories selected (see at least Figure 3; Figures 7-9; col. 7, lines 12-15; col. 12, lines 12-26; col. 14, line 65 – col. 15, line 25).

Regarding claims 12-13 (as best understood), Camaisa discloses user input of a delivery time, delivery address and storage (see at least col. 7, lines 12-15; col. 9, lines 27-29; col. 13, lines 35-39).

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

**Claims 7-9 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,845,263 to Camaisa et al. in view of U.S. Patent No. 5,991,739 to Cupps et al.**

Regarding claim 7 (as best understood), Camaisa discloses a method of operating an online ordering system, comprising:

- display of the start page (see at least Figure 3; Figures 6-7; col. 14, line 45-col. 15, line 3);
- response of the system to the use input on the basis of the stored data on the food outlets and display of the food outlets;
- user input in such a way that one of the displayed food outlets is selected;
- response of the system to the user input on the basis of the stored data on the food outlets and display of the items of food offered by the food outlet selected;
- user input in such a way that one of the displayed items of food is selected from a table reservation is made; and
- response of the system to the user input and transmission of the order to the food outlet selected.

However, Camaisa does not disclose a geographical specification.

Camaisa discloses an interactive visual ordering system to provide customers of a business with remote access of product information, including product description, prices, and sales and delivery information (col. 7, lines 12-15).

Furthermore, Camaisa discloses order information is placed automatically for processing, wherein the order is placed and delivered in a timely manner (col. 13, lines 35-39). Cupps, on the other hand, teaches the geographical specification (see at least Figure 11, ref. no. 302; col. 6, lines 19-30; col. 6, lines 45-56; col. 9, lines 48-55).

It would have been obvious to one of ordinary skill in the art at the time of the invention was made to modify the method of Camaisa, to include the

geographical specification, as taught by Cupps, in order to determine whether a customer is within a specified geographic area of a restaurant's area (Cupps col. 7, lines 1-4).

Regarding claim 8, Camaisa discloses the transmission of the order takes place on a fax machine at the selected food outlet (see at least col. 16, lines 44-45).

Regarding claim 9 (as best understood), Camaisa discloses displaying various categories of food; user input of a specific category of the categories of food displayed; and response of the system to the user input on the basis of the stored data on the food outlets and display of the food outlets which offer the category of food selected (see at least Figure 3; Figures 7-9; col. 12, lines 12-26; col. 14, line 65 – col. 15, line 25).

Regarding claim 15 (as best understood)(depending on claim 7), Camaisa discloses use of an online ordering system comprising:

- at least a first computer system which is accessible via the Internet under at least one domain, in which data on food outlets are stored on which a program runs (see at least Figures 1-2; col. 5, lines 37-67; col. 6, lines 38-52; col. 7, lines 24-35);
- in each case a communication connection which can be established at least temporarily between the computer system and at least a large number of all the food outlets covered (see at least Figures 1-2; col. 5, lines 37-67; col. 7, lines 24-35); and

- connects an output device and/or display device at the food outlets to the first computer system (see at least Figures 1-2; col. 5, lines 37-67; col. 7, lines 24-35).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 5,003,472 to Perrill et al. discloses an apparatus for order entry in a restaurant which includes host and remote portable terminals.

U.S. Patent No. 5,262,938 to Rapoport et al. discloses a method for routing food order in a dining establishment using a computer having a monitor and a first printer at an ordering location and a second printer located at a food preparation location and linked to a computer.

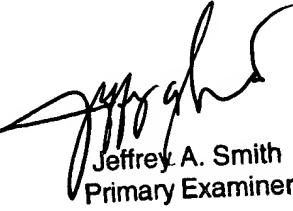
U.S. Patent No. 6,236,974 to Kolawa et al. discloses a computer system that will perform all of the selection and organization tasks involved with suggesting products to the user including menus for family meal planning.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marissa Thein whose telephone number is 703-305-5246. The examiner can normally be reached on M-F 8:30-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey Smith can be reached on 703-308-3588. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

mtot  
September 19, 2004



Jeffrey A. Smith  
Primary Examiner